

Message Text

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ORIGIN MCT-02

INFO OCT-01 EUR-12 EA-10 ISO-00 EB-08 L-03 SP-02
CAB-02 CIAE-00 COME-00 DODE-00 DOTE-00 INR-10
NSAE-00 FAA-00 SIG-03 SS-15 /068 R

DRAFTED BY M/CT:ACEQUAINTON:IJG
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-----127885 071135Z /12

R 070005Z SEP 78
FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA
INFO AMEMBASSY BONN
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY TOKYO

C O N F I D E N T I A L STATE 226373

E.O. 11652: GDS

TAGS: PINS

SUBJECT: BONN DECLARATION ON HIJACKING: CANADIAN DRAFT
GUIDELINES

REF: (A) BONN 14129; (B) OTTAWA 3941

1. FOLLOWING IS REVISED TEXT OF CANADIAN DRAFT GUIDELINES
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PAPER WHICH INCORPORATES PROPOSED USG MODIFICATIONS.
EMBASSY SHOULD TRANSMIT TEXT TO CANADIAN AUTHORITIES.
EMBASSY MAY WISH TO INDICATE TO GOC THAT REDRAFTING REPRESENTS A USG ATTEMPT TO STREAMLINE GUIDELINES BY MAKING THEM APPLICABLE TO ALL HIJACKING SITUATIONS. WE HAVE ALSO ADDED A PREAMBLE WHICH SETS OUT THE GENERAL POLICY AND ORGANIZATIONAL CONTEXT IN WHICH THE GUIDELINES WILL BE

USED. WE HAVE GIVEN TEXT AND MADE COMMENTS TO CANADIAN EMBASSY.

QUOTE - GUIDELINES FOR DETERMINATION OF DEFAULT AND SUSPENSION OF AIR SERVICES UNDER BONN DECLARATION:

1. PREAMBLE:

THE GUIDELINES SET OUT BELOW ARE DESIGNED TO ACHIEVE, AMONG THE SEVEN PARTICIPANTS IN THE BONN SUMMIT,

(HEREINAFTER PARTICIPANTS), UNIFORM AND COORDINATED IMPLEMENTATION OF THE BONN DECLARATION, (HEREINAFTER DECLARATION).

EACH OF THE PARTICIPANTS HAS DESIGNATED AN AGENCY OF ITS GOVERNMENT TO ACT AS THE CONTACT POINT FOR EXCHANGE OF INFORMATION AND COORDINATION OF IMPLEMENTATION OF THE DECLARATION. FURTHER, AND NOTWITHSTANDING THE GUIDANCE SET OUT BELOW, EACH PARTICIPANT SHALL UTILIZE TO THE FULLEST ITS RESOURCES TO FOLLOW ANY HIJACKING OF WHICH IT BECOMES AWARE TO ENSURE THE COLLECTION OF ACCURATE AND COMPLETE INFORMATION. IT IS ALSO UNDERSTOOD, IN ANY HIJACKING OF AN AIRCRAFT TO A PARTICIPANT STATE, THAT THAT PARTICIPANT WOULD INITIATE AND CARRY OUT ACTIONS CALLED FOR PURSUANT TO ITS COMMITMENT UNDER THE DECLARATION AND CONFIDENTIAL

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THE HAGUE CONVENTION.

2. CONSULTATIVE MECHANISM

THE PARTICIPANTS TO THE DECLARATION SHALL, THROUGH THEIR DESIGNATED AGENCIES, ESTABLISH CONTACT AND MAINTAIN COMMUNICATIONS FOR PURPOSES OF RECEIVING EACH OTHER'S VIEWS CONCERNING THE ACTIONS WHICH ARE OR WILL BE TAKEN IN CONNECTION WITH THE INCIDENT.

3. GUIDELINES FOR INITIATING CONSULTATIVE MECHANISMS

A. RESPONSIBILITY FOR TRIGGERING CONSULTATIVE MECHANISM

(1) WHEN THE AIRCRAFT OF A PARTICIPANT IS HIJACKED, THE STATE OF REGISTRY OR OF OPERATION CAN TRIGGER THE CONSULTATIVE MECHANISM. (HOWEVER, ANY PARTICIPANT MAY TRIGGER THE MECHANISM WHEN THE STATE OF REGISTRY OR OF OPERATION DOES NOT ACT.)

(2) IF THE PLANE IS NOT REGISTERED IN OR OPERATED BY ONE OF THE PARTICIPANTS, ANY PARTICIPANT HAS THE OPTION TO

TRIGGER THE CONSULTATIVE MECHANISM.

B. COORDINATION OF CONSULTATIVE MECHANISM

COORDINATION OF IMPLEMENTATION OF THE CONSULTATIVE MECHANISM AND EXCHANGE OF VIEWS AMONG PARTICIPANTS IS TO BE HANDLED BY THE TRIGGERING PARTICIPANT WITH ASSISTANCE PROVIDED BY OTHER PARTICIPANTS AS NEEDED.

C. INCLUSION OF ADDITIONAL DECLARANTS

A DETERMINATION BY THE PARTICIPANTS TO PERMIT ADDITIONAL STATES THAT ARE NOT PARTICIPANTS TO PARTICIPATE IN THE CONSULTATIVE MECHANISM MAY BE MADE IF: (1) THAT STATE CONFIDENTIAL

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HAS PUBLICLY DECLARED ITS INTENTION TO SUPPORT THE DECLARATION, THEREBY BECOMING A DECLARANT; AND (2) THE DECLARANT STATE HAS SIGNIFICANT INTERESTS AT STAKE, EITHER (A) ITS AIRCRAFT WAS INVOLVED; OR (B) IT WAS BEING ASKED BY THE HIJACKERS TO PAY RANSOM, RELEASE PRISONERS, ETC.; OR (C) A SUBSTANTIAL NUMBER OF ITS CITIZENS WERE PASSENGERS ON THE HIJACKED AIRCRAFT; OR, (D) IF THE AIR SERVICES OF THAT STATE WOULD BE SIGNIFICANTLY AFFECTED IF ENFORCEMENT MEASURES WERE TAKEN.

4. FACT FINDING PHASE (IMMEDIATE)

A. IT SHALL BE THE RESPONSIBILITY OF THE TRIGGERING STATE, IN COOPERATION WITH OTHER AFFECTED STATES OR PARTICIPANTS, TO OBTAIN ALL AVAILABLE INFORMATION CONCERNING THE HIJACKING, INCLUDING THE CIRCUMSTANCES OF THE HIJACKING, ACTION ALREADY TAKEN BY THE STATE(S) WHERE THE ALLEGED HIJACKER OR THE HIJACKED PLANE IS LOCATED (HEREINAFTER STATE OF CONCERN) AND THE INTENTIONS OF THE STATE OF CONCERN.

B. THE TRIGGERING STATE SHALL REPORT ALL FACTS TO THE OTHER PARTICIPANTS AND SHALL ASSURE THE COMPLETENESS AND RELIABILITY OF THE INFORMATION THROUGH COOPERATION WITH THE OTHER STATES.

C. EACH PARTICIPANT IS RESPONSIBLE FOR REVIEWING ITS AIR SERVICES, AS WELL AS THOSE AIR SERVICES OF OTHER STATES OPERATING INTO ITS TERRITORY TOGETHER WITH ANY APPLICABLE AGREEMENTS WHICH MAY BE AFFECTED BY A DECISION OF THE PARTICIPANTS TO IMPOSE SANCTIONS.

D. THROUGHOUT THE FACT-FINDING STAGE, PARTICIPANTS MAY CONFIDENTIAL

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CONSIDER THE POSSIBILITY AND ADVISABILITY OF COMMUNICATING WITH THE STATE OF CONCERN, THIRD STATES AND STATES WHICH MAY BE INTERESTED DECLARANTS UNDER 3.C. ABOVE.

5. DETERMINATION OF COMPLIANCE OR DEFAULT

A. THE PARTICIPANTS IN DETERMINING WHETHER THERE IS COMPLIANCE OR DEFAULT SHALL CONSIDER THE FOLLOWING FACTORS:

(1) HAS THE STATE OF CONCERN ESTABLISHED JURISDICTION OVER OFFENCE FOR PURPOSES OF PROSECUTION OR EXTRADITION?

(2) AS TO PROSECUTION:

(I) WILL THE STATE OF CONCERN PROSECUTE THE ALLEGED OFFENDER IN THE SAME MANNER AND WITHOUT AN UNREASONABLE DELAY AS IT WOULD IN THE CASE OF ANY ORDINARY OFFENCE OF A SERIOUS NATURE UNDER THE LAW OF THE STATE OF CONCERN?

(II) IF THE STATE OF CONCERN IS A PARTY TO THE HAGUE CONVENTION, DOES ITS LEGAL SYSTEM PERMIT IT TO USE THE PROSECUTION AUTHORITY OF THE CONVENTION?

(3) AS TO EXTRADITION:

(I) HAS THE STATE OF CONCERN RECEIVED REQUEST FOR EXTRADITION?

(II) IF THE STATE OF CONCERN IS A PARTY TO THE HAGUE CONVENTION, DOES ITS LEGAL SYSTEM PERMIT IT TO USE THE EXTRADITION AUTHORITY OF THE CONVENTION IN THE ABSENCE OF BILATERAL EXTRADITION ARRANGEMENTS?

(III) DOES THE STATE OF CONCERN HAVE APPLICABLE EXTRADITION AGREEMENTS WITH OTHER STATES HAVING A JURISDICTIONAL BASIS FOR PROSECUTION?

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(4) HAS THE AIRCRAFT BEEN RETURNED BY THE STATE OF CONCERN TO THE PERSONS LAWFULLY ENTITLED TO POSSESSION OR IS THE STATE OF CONCERN CLAIMING INABILITY TO RETURN THE AIRCRAFT PROMPTLY FOR SUCH REASONS AS UNSERVICEABILITY OF AIRCRAFT AND NEED TO RETAIN AIRCRAFT FOR EVIDENTIARY PURPOSES? IS THE STATE OF CONCERN A PARTY TO THE TOKYO

CONVENTION?

(5) HAVE THE PASSENGERS BEEN ALLOWED TO CONTINUE THEIR JOURNEY AND/OR CARGO OR PROPERTY RETURNED OR FORWARDED AS APPROPRIATE?

B. THE PARTICIPANTS SHALL DECIDE TO INFORM STATE(S) OF CONCERN OF POSSIBLE CONSEQUENCES OF FAILURE TO EXTRADITE OR PROSECUTE THE HIJACKER OR TO RETURN THE AIRCRAFT. (THE WARNING MAY BE IN THE FORM OF PRIVATE DIPLOMATIC COMMUNICATION OR PUBLIC NOTIFICATION OR BOTH.)

C. THE PARTICIPANTS SHALL MAKE A DETERMINATION OF DEFAULT AGAINST THE STATE OF CONCERN FOR FAILURE TO EXTRADITE OR PROSECUTE THE HIJACKERS OR TO RETURN THE AIRCRAFT.

6. ENFORCEMENT PHASE

A. THE PARTICIPANTS SHALL DECIDE TO APPLY ENFORCEMENT MEASURES AS PROVIDED FOR IN THE DECLARATION, DETERMINE THE NATURE, SCOPE AND EFFECTIVE DATE FOR SUSPENSION OF AIR SERVICES TO AND FROM DEFAULTING STATE AND NOTIFY THE

DEFAULTING STATE AND OTHER STATES WHOSE AIR SERVICES WOULD BE AFFECTED OF THE ENFORCEMENT MEASURES.

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B. EACH PARTICIPANT SHALL COORDINATE AND MONITOR IMPLEMENTATION OF ENFORCEMENT MEASURES AND REVIEW EFFECTIVENESS OF ENFORCEMENT MEASURES TAKEN.

C. EACH PARTICIPANT MAY MAKE RECOMMENDATIONS AS TO THE CONTINUATION OR TERMINATION OF THE ENFORCEMENT MEASURES AT ANY TIME.

D. THE PARTICIPANTS MAY APPROVE OR DISAPPROVE THE RECOMMENDATIONS MADE UNDER C. ABOVE.

E. FOLLOWING THE PARTICIPANTS DECISION TO TERMINATE, NOTIFICATION OF TERMINATION OF ENFORCEMENT MEASURES SHALL BE MADE TO ALL STATES AFFECTED.

7. INDIVIDUAL ACTIONS OF PARTICIPANTS

NOTHING HEREIN SHALL BE CONSTRUED AS ABROGATING THE RIGHT OF ANY PARTICIPANT TO ACT INDIVIDUALLY UNDER ITS DOMESTIC LAW IN THE EVENT THE PARTICIPANTS FAIL TO AGREE ON A DETERMINATION OF DEFAULT OR ENFORCEMENT ACTION, OR TERMINATION OF ENFORCEMENT. CHRISTOPHER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXT, DECLARATION, ANTIHIJACKING PROCEDURES, FOREIGN POLICY POSITION
Control Number: n/a
Copy: SINGLE
Draft Date: 07 sep 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE226373
Document Source: CORE
Document Unique ID: 00
Drafter: ACEQUAINTON:IJG
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780364-0597
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780993/aaaacyrl.tel
Line Count: 278
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b5f86856-c288-dd11-92da-001cc4696bcc
Office: ORIGIN MCT
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 BONN 14129, 78 OTTAWA 3941
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 20 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1517855
Secure: OPEN
Status: NATIVE
Subject: BONN DECLARATION ON HIJACKING: CANADIAN DRAFT GUIDELINES
TAGS: PINS, CA
To: OTTAWA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/b5f86856-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014